

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - SE/S of Philadelphia Road, 379.84' SW of Philco Road (9713 Philadelphia Road) 15th Election District 6th Councilmanic District

* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

* Case No. 91-84-XA

Fred W. Marschke, et ux
Petitioners

ORDER

This matter comes before the Zoning Commissioner on Petitioners' Motion for Reconsideration, Modification and Supplementation of the Order issued in this matter on December 28, 1990.

The Petitioners appeared, testified and were represented by S. Eric DiNenna, Esquire and William D. Shaughnessy, Jr., Esquire. Also appearing on behalf of the Petition were Bruce J. Glassman, George A. Klein, Jr., Diane M. Klein and David Klein. Appearing as Protestants in the matter were Marie Q. Simoes and Gloria J. Turner.

Testimony indicated that the subject property, known as 9713 Philadelphia Road, consists of 1.0893 acres more or less zoned M.L.-I.M. and is improved with an existing six-bay garage and a 1 and 1/2 story dwelling which has been the Petitioners' residence since 1959. Petitioners were granted a special exception and variances for the service garage use of Bays 4 and 5 by Bruce's Automotive Service, Inc., on December 28, 1990, subject to restrictions. Petitioners were denied the special exception relief requested for Bays 1, 2 and 3. Thereafter, Petitioners submitted a Motion for Reconsideration, Modification and Supplementation to support the relief requested for Bays 1, 2 and 3. Petitioners proffered the following additional testimony in support of the requested additions and

revisions contained in said Motion for Reconsideration, Modification and Supplementation.

The proffered testimony indicated that D. Klein's Bodyworks, Inc. business is derived from other commercial establishments which are located in the surrounding industrial area. Several of Mr. Klein's commercial clients include, but are not limited to, C.B.M. Contractors, Hoenig Contractors and Aero Heating. Testimony also indicated that Mr. Klein is actively soliciting various industries in the area for their "fleet work".

Mrs. Marie Simoes and Mrs. Gloria Turner testified as Protestants, sharing similar concerns. Mrs. Simoes and Mrs. Turner renewed their objections raised at the original hearing in this matter and requested that the Petitions and subject Motion be denied. Of particular concern to the Protestants was the issue of disabled vehicles being stored on the subject property as a result of the commercial enterprises conducted thereon. It was also a concern that said businesses would outgrow the subject site and create a commercial eyesore for the surrounding residential community. The Protestants indicated that their community association did not have the manpower nor the resources to adequately police this site to insure compliance with a liberally worded Order.

Petitioners, through Counsel, presented additional testimony and evidence which indicated that this commercial operation could be conducted without detriment to the health, safety or general welfare of the surrounding community if the operation were properly restricted. Based upon the additional testimony and evidence presented at the hearing on Petitioners' Motion for Reconsideration, Modification and Supplementation, it is clear the original Order issued in Case No. 91-84-XA dated December 28, 1990 should be amended accordingly.

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THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 3rd day of June, 1991 that the Petition for Special Exception to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Bodyworks, Inc., or operations substantially similar to this limited operation, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED, pursuant to the relief requested in the Petitioners' Motion for Reconsideration, Modification and Supplementation, that Restriction No. 2 of the Order issued in Case No. 91-84-XA dated December 28, 1990 shall be amended to read as follows:

"2) The special exception relief granted herein for the use of Bays 4 and 5 is for a limited service operation similar to that currently conducted by Bruce's Automotive Service, Inc. In no event shall there be a total of more than three persons working at the subject bays. Additionally, the relief granted herein for the use of Bays 1, 2 and 3 is for a limited service operation similar to that currently conducted by D. Klein's Bodyworks, Inc. In no event shall there be a total of more than three persons working at the subject bays."

IT IS FURTHER ORDERED that the request for the deletion of Restriction No. 3 of the Order issued in Case No. 91-84-XA dated December 28, 1990 be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the request for the deletion of the words "for use" at the end of the first sentence of Restriction No. 4 from the Order issued in Case No. 91-84-XA dated December 28, 1990 be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that Restriction No. 5 of the Order issued in Case No. 91-84-XA dated December 28, 1990, shall be amended in its entirety to read as follows:

"5) In the event destruction of the existing building or shed occurs, no replacement of either building shall be permitted except within strict compliance with the then-applicable B.C.Z.R."

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IT IS FURTHER ORDERED that Restriction No. 8 of the Order issued in Case No. 91-84-XA dated December 28, 1990, shall be amended in its entirety to read as follows:

"8) With respect to the use of Bays 4 and 5, the user of such bays shall be permitted no more than one (1) outside stored vehicle. Said vehicle may remain on the parking area for no more than twenty-four (24) consecutive hours, or in the "disabled vehicle storage area" depicted on Petitioner's Exhibit 1 for a period of sixty (60) days. Further, the user of Bays 1, 2 and 3 shall be limited to the outside storage of two vehicles. Said vehicles may remain on the parking area for no more than twenty-four (24) consecutive hours, or in the disabled vehicle storage area for a period of sixty (60) days. In no event shall any stored vehicle be unlicensed nor shall they be stored for the purposes of dismantling such vehicles for "parts". Further, Petitioner shall provide screening for the subject disabled vehicle storage area, said screening to be approved by the Deputy Director of Planning prior to the issuance of any permits regarding this matter."

IT IS FURTHER ORDERED that Restriction No. 9 of the Order issued in Case No. 91-84-XA dated December 28, 1990 shall be amended in its entirety to read as follows:

"9) There shall be no towing company or similar operation conducted from the subject site. Neither shall the subject property be used as a regular "drop-off" site by any towing company, nor shall any business utilizing the property operate a towing vehicle for transporting vehicles to the site. Nothing herein shall prohibit the towing of a vehicle to the property incidental to having work performed on such vehicle at the property."

IT IS FURTHER ORDER that Restriction No. 10 of the Order issued in Case No. 91-84-XA dated December 28, 1990 shall be amended in its entirety to read as follows:

"10) The hours of operation for all commercial activity on the subject site shall be limited to 7:30 AM to 7:30 PM Monday through Friday, and 7:30 AM to 5:30 PM on Saturdays. There shall be no commercial activity on the subject property on Sundays."

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IT IS FURTHER ORDERED that the terms and conditions of the original Order issued in Case No. 91-84-XA dated December 28, 1990 shall remain in full force and effect except where said Order is inconsistent with the findings, restrictions and relief granted herein; and,

IT IS FURTHER ORDERED that the relief granted herein is subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

June 5, 1991

William D. Shaughnessy, Jr., Esquire
20 S. Charles Street, 10th Floor
Baltimore, Maryland 21201

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
SE/S Philadelphia Road, 379.84' SW of Philco Road
(9713 Philadelphia Road)
15th Election District - 6th Councilmanic District
Fred W. Marschke, et ux - Petitioners
Case No. 91-84-XA

Dear Mr. Shaughnessy:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Motion for Reconsideration, Modification and Supplementation to the Order issued December 28, 1990 has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

cc: Mr. & Mrs. Frederick W. Marschke
9713 Philadelphia Road, Baltimore, Md. 21237

Ms. Marie Q. Simoes
1314 Spotswood Road, Baltimore, Md. 21237

Ms. Gloria J. Turner
9226 Ravenwood Road, Baltimore, Md. 21237

The Honorable Delegate Joe Bartenfelder
4803 Royahn Avenue, Baltimore, Md. 21236

People's Counsel; File

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - SE/S of Philadelphia Road, 379.84' SW of Philco Road (9713 Philadelphia Road) 15th Election District 6th Councilmanic District

* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

* Case No. 91-84-XA

Fred W. Marschke, et ux
Petitioners

ORDER

WHEREAS, the Petitioner filed a Motion for Reconsideration, Modification and Supplementation to the Order issued on December 28, 1990 in the above captioned matter; and,

WHEREAS, a hearing, upon the issues raised in the Motion for Reconsideration, has been set for February 5, 1991 at 4:00 P.M. in Room 106 of the County Office Building.

NOW, THEREFORE, IT IS ORDERED by the Zoning Commissioner this 2nd day of January, 1991 that the Findings of Facts and Conclusions of Law issued on December 28, 1990 in case No. 91-84-XA be and it is hereby stayed until a Supplemental and/or Amended Findings of Facts and Conclusions of Law can be issued after the hearing on February 5, 1991.

JRH:mmm

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Towson, MD 21204

January 24, 1991

887-3353

William D. Shaughnessy, Jr.
20 S. Charles Street, 10th Floor
Baltimore, Maryland 21201

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
SE/S Philadelphia Road, 379.84' SW of Philco Road
(9713 Philadelphia Road)
15th Election District - 6th Councilmanic District
Fred W. Marschke, et ux - Petitioners
Case No. 91-84-XA

Dear Mr. Shaughnessy:

Enclosed please find a copy of the Order in response to your Motion for Reconsideration, Modification and Supplementation regarding the above captioned matter.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:mmm

cc: Mr. & Mrs. Frederick W. Marschke
9713 Philadelphia Road, Baltimore, Md. 21237

Ms. Marie Q. Simoes
1314 Spotswood Road, Baltimore, Md. 21237

Ms. Gloria J. Turner
9226 Ravenwood Road, Baltimore, Md. 21237

The Honorable Delegate Joe Bartenfelder
4803 Royahn Avenue, Baltimore, Md. 21236

People's Counsel

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Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE



Dennis F. Rasmussen
County Executive

Fred W. Marschke
9713 Philadelphia Road
Baltimore, Maryland 21237

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 91-84-XA
SE/S Philadelphia Road, 379.84' SW of Philco Road
9713 Philadelphia Road
15th Election District - 6th Councilmanic
Petitioner(s): Fred W. Marschke, et ux
HEARING: TUESDAY, OCTOBER 23, 1990 at 9:30 a.m.

Dear Sir:

Please be advised that \$ 43.74 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE OFFICE SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional \$50.00 added to the above amount for each such set not returned.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

JRH:gs

cc: William D. Shaughnessy, Jr.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

October 15, 1990



Dennis F. Rasmussen
County Executive

William D. Shaughnessy, Esquire
20 S. Charles Street
Baltimore, MD 21201

RE: Item No. 299, Case No. 91-84-XA
Petitioner: Fred W. Marschke, et ux
Petition for Zoning Variance and
Special Exception

Dear Mr. Shaughnessy:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 687-3391.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Fred W. Marschke
9713 Philadelphia Road
Baltimore, MD 21237

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Your petition has been received and accepted for filing this
6th day of March, 1990.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Fred W. Marschke, et ux

Petitioner's Attorney: William D. Shaughnessy, Jr.

LAW OFFICES
KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELORAD, P.A.

18TH FLOOR SUN LIFE BUILDING
20 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

(301) 539-4967

TELEPHONE

(301) 752-0685

January 9, 1991

Commissioner J. Robert Haines
Zoning Commissioner of
Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204

Re: Case No. 91-84-XA
Date of Hearing: 10/23/90; 9:30 a.m.

Dear Commissioner Haines:

A hearing on Case No. 91-84-XA was held on October 23, 1990. A telephone call to the Zoning Office revealed that one tape was taken of this hearing. I would herein respectfully request that I receive a copy of this tape, and enclose this firm's check in the amount of \$15.00 in payment of same. I would appreciate it if your office could expedite the reproduction of the tape and call me when it is available.

If you have any problems whatsoever with this request, please contact the undersigned at (301) 539-6967.

Very truly yours,

William D. Shaughnessy, Jr.
WILLIAM D. SHAUGHNESSY, JR.

WDS/plh

Enclosure

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Towson, MD 21204

January 24, 1991

887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland, as follows:

Petitions for Special Exception and Zoning Variance
Case Number: 91-84-XA
SE/S Philadelphia Road, 379.84' SW of Philco Road
9713 Philadelphia Road
15th Election District - 6th Councilmanic
Petitioner(s): Fred W. Marschke, et ux
HEARING: TUESDAY, FEBRUARY 5, 1991 at 4:00 p.m.

HEARING ON THE MOTION FOR RECONSIDERATION OF THE DECEMBER 28, 1990 ORDER.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

cc: Fred W. Marschke, et ux
William D. Shaughnessy, Jr., Esq.
Marie Q. Simoes
Gloria J. Turner
Honorable Delegate Joe Bartenfelder
People's Counsel

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

March 23, 1990



Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 293, 294, 295, 296, 297, 298, 299, 301, 302, 303, 304, 305, and 306.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Assoc. II

MSF/lvw

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

September 5, 1990



Dennis F. Rasmussen
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petitions for Special Exception and Zoning Variance
CASE NUMBER: 91-84-XA
SE/S Philadelphia Road, 379.84' SW of Philco Road
9713 Philadelphia Road
15th Election District - 6th Councilmanic
Petitioner(s): Fred W. Marschke, et ux
HEARING: TUESDAY, OCTOBER 23, 1990 at 9:30 a.m.

Special Exception: A service garage.
Variance to permit existing 22 ft. side yard setback for existing service building in lieu of required 30 ft. setback; to permit existing off-street parking area of approximately 16,300 sq. ft. to remain as crushed stone in lieu of the required "durable and dustless surface", and to permit such existing off-street parking area to remain unstriped in lieu of required striping, to permit approximately 2,800 sq. ft. of parking area, which is to be used as an area for storage of damaged or disabled motor vehicles, to remain as crushed stone surface in lieu of paving such property line and existing 2 ft. side yard setback from existing service building, for existing 12 ft. x 16 ft. shed in lieu of required 30 ft. setbacks for each building; to permit yard space and required area used for determining rear yard setbacks for existing service building to be used also for side and rear yard setbacks for existing 12 ft. x 16 ft. shed.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Fred W. Marschke, et ux
William D. Shaughnessy, Jr., Esq.
John J. Hurt/Discovery Days
Mr. Thomas Fox

BALTIMORE COUNTY, MARYLAND
INTER OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: April 3, 1990
FROM: Robert W. Bowling, P.E.
RE: Zoning Advisory Committee Meeting
for March 27, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 295, 296, 298, 299, 301, 303, 304, 305 and 306.

For Item 293, a County Review Group Meeting may be required.

For Item 294, the previous County Review Group comments apply and a Public Works Agreement may be required.

For Item 297, a County Review Group Meeting and Public Works Agreement may be required.

For Item 302, the previous County Review Group comments apply.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: April 10, 1990
Zoning Commissioner

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Fred W. Marschke, Item No. 299

The Petitioner requests a Variance to permit a 14 ft. side setback for an existing building; and to permit a crushed stone paving area in lieu of a durable, dustless surface; and to permit such existing paving to remain unstriped; and to permit 2,800 sq. ft. of parking area used for storage to remain as a crushed stone surface.

In reference to the Petitioner's request, staff offers the following comments:

- In the event that the business is subdivided from the dwelling, a record plat and maintenance covenants will be required.
- The issue of providing access to the rear portion of the site should be addressed to prevent that area from becoming landscaped.
- The location and setback of the shed have not been addressed. Should the shed be attached to the garage, a variance for 18 ft. in lieu of 30 ft. is required. If the shed is detached, the distance between the garage and the shed will necessitate a variance.
- Vehicular access should be restricted from the area which extends outside of the special exception line or that same line should be adjusted to include the paved area.

Should the Petitioner's request be granted, staff recommends the following conditions:

- The storage of damaged or disabled motor vehicles should be limited to the designated enclosed storage area.
- Hours of operation should be limited to between 8:00 A.M. and 6:00 P.M.

Fred W. Marschke, Item No. 270
Page 2
April 9, 1990

- All lighting fixtures used to illuminate the parking area shall be arranged to reflect light away from residential lots and public streets.
- A landscape plan shall be submitted to the Deputy Director of the Office of Planning and Zoning prior to the issuance of any building permits.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

BALTIMORE COUNTY, MARYLAND
Inter-office Correspondence

TO: J. Robert Haines
FROM: Robert C. Merrey, Jr.
DATE: April 16, 1990
SUBJECT: Zoning Advisory Committee Meeting Item 299

Comments on Zoning Advisory Committee Meeting Item 299 are as follows:

Property Owner: Fred W. Marschke & Evelyn A. Marschke

Location: 9713 Philadelphia Road

Existing Zoning: M1-IM since (1972)

Area: 1,089 acres

District: 15th Election District, 6th Councilmanic District

This office recommends approval of crusher-run "crushed stone" in lieu of the required durable and dustless surface for the parking area and the disabled vehicle storage area. All crusher-run surfaces are to be treated in accordance with Environment Article 26.11.06 D (2) in order to prevent particulate matter from becoming airborne. Treatment and maintenance of this surface is an owner responsibility and will be on a continuing basis as necessary to control airborne particulate.

tk

cc: Field Services
Eastern Regional

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(801) 887-3333

March 19, 1990

Mr. Fred W. Marschke
9713 Philadelphia Road
Baltimore, Maryland 21237

RE: Item #299
Violation Case #90-1116
9713 Philadelphia Road

Dear Mr. Marschke:

This correspondence is to alert you to a deficiency which exists in your petition for special exception and variance public hearings which are currently on file in this office under Zoning Item #299.

The revised plan information requested by this office after your first filing was provided on your petition plans, subsequently accepted for filing on March 6, 1990. However, an additional structure with apparently deficient setbacks was added to your plan (an existing 12' x 16' shed) by your engineer and I was not alerted to this site plan change during the revised petition review.

This office strongly suggests that since the shed appears to be detached from the garage and therefore requires its own principal building setbacks that revisions be made to the variance petitions to address the setback deficiency.

Please contact me as soon as possible to revise these petitions as I have been instructed to hold this item number out of the normal petition procedure until such revisions take place or you make known in writing your intent to continue without addressing this issue (a \$75.00 fee is required for any revisions).

Please contact me for any clarification of this problem at 887-3391.

Very truly yours,

John L. Lewis
Planning & Zoning Associate

JLL/jat
cc: William D. Shaughnessy, Esq.

91-84-XA

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer DATE: March 15, 1990
Zoning Supervisor

FROM: James H. Thompson
Zoning Enforcement Coordinator

RE: Item No. 299 (if known)
Petitioner: FRED MARSCHKE (if known)

VIOLATION CASE # C-90-1116

LOCATION OF VIOLATION 9713 Philadelphia Rd.
Baltimore, Md. 21237

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME ADDRESS
THERESA GRAY 94 KING CIRCLE 21237

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

ech/ljw

LAW OFFICES
KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELGRAD, P.A.
TENTH FLOOR SUN LIFE BUILDING
20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

CHARLES D. HEYMAN
HARVEY S. GREENBERG
WILLIAM H. ENGELMAN
ROBERT J. BELGRAD
EDWARD F. SHEA, JR.
THEODORE S. MILLER
ABRAHAM A. ADLER
MARK D. COPELAND
STANLEY S. FINE
SCARLETT WINICK
KENNETH F. NUNAN
JOHN PHILIP WOLFE
LOWELL S. HEYMAN
HARVEY S. COOPERMAN
WILLIAM H. GREENBERG, JR.
DANIEL S. KATZ
MICHAEL S. BEYMAN
THOMAS D. WOLFE
STEVEN M. GREENMAN
BARRY WEISBOFF

January 21, 1991

The Honorable J. Robert Haines
Zoning Commissioner
Baltimore County Office of
Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Petitions for Special Exception and
Zoning Variance - Case No. 91-84-XA

Dear Commissioner Haines:

I am filing with this letter a Motion for Reconsideration, Modification and Supplementation in the above case. The Motion addresses the denial of the special exception for the use of Bays 1, 2 and 3 as a service garage, and the Motion also seeks clarification and modification of the various restrictions set forth in the December 28, 1990 Order.

I would request a hearing on the Motion, and I would expect such a hearing to be very short in duration.

Although the Order is dated December 28, 1990, I did not receive the Order in my office until January 7, 1990, presumably due to holiday mail delays. Nevertheless, since the thirty day appeal period would expire January 27, 1991, time is of the essence. I would greatly appreciate it if you could schedule a short hearing on the Motion at your earliest possible convenience. If a hearing cannot be held prior to the expiration of the appeal period, would you kindly stay the original Order dated December 28, 1990 pending your

SOUTHERN KAPLAN
FIRM
LENA A. WILSON
AND J. SCOTT
ELISA J. WINTHROP
MICHAEL J. ALLEN
LOUIS H. PARK

ZONING OFFICE

HAND DELIVERED

DINENNA AND BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.

FRANCIS X. BORGHERINO, JR.
2140 MEMBER OF DISTRICT OF
COLUMBIA BAR

SUITE 600
MERCANTILE TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(401) 296-6820
TELEFAX (301) 296-6884

February 1, 1991

Ms. Marie Q. Simoes
Nottingham Improvement Association, Inc.
1314 Spotswood Road
Baltimore, Maryland 21237

Re: Marschke Property - 9713 Philadelphia
Road
Special Exception

Dear Marie:

Please be advised that I represent Mr. David Klein who operates the service garage for body and fender work at the above-captioned location which was the subject of the Order of the Zoning Commissioner dated December 28, 1990.

My client has sent me a copy of the letter that you forwarded Mr. Shaughnessy, the attorney for the land owner, concerning this matter dated January 27, 1991.

I would welcome you and Ms. Turner to the hearing for reconsideration on Tuesday, February 5, 1991 at 4:00 p.m. before the Zoning Commissioner. I think it is imperative that you be present to fully understand the request of the Petitioner and the Tenants concerning this matter.

It is not anyone's intent to expand the operation, but to keep the basic status quo. The plans submitted and the commitments to be made at that hearing will certainly protect your Association and any adjoining neighbors involved.

I look forward to seeing you on that date and time.

Very truly yours,

S. ERIC DINENNA

SED:ejc
cc: J. Robert Haines
Zoning Commissioner for Baltimore County
The Honorable Joseph Bartenfelder
William D. Shaughnessy, Jr., Esquire
Mr. David Klein

Nottingham Improvement Association, Inc.
(NOTTINGHAM)
Baltimore, Maryland 21237

1314 Spotswood Road
Baltimore, MD 21237
January 27, 1991

William D. Shaughnessy, Jr.
20 S. Charles Street, 10th Floor
Baltimore, MD 21201

Re: Marschke Property - 9713 Philadelphia Road
Special Exception and Variance Case No. 91-84-XA

Dear Mr. Shaughnessy:

In response to your letter of January 21 regarding a Motion for Reconsideration, Modification, and Supplementation, the residents of the community of Nottingham were consulted at a regularly scheduled meeting held on January 23. Although we are not the original Protestants in this case, Ms. Turner and I did represent the views and concerns of homeowners in Nottingham at the Zoning Hearing on October 23, 1990.

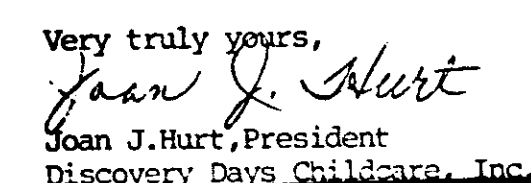
The Zoning Commissioner's decision (December 28, 1990) adheres to the zoning regulations developed to encourage positive land use as well as to protect existing communities. Ms. Turner and I, representing Nottingham, support the Commissioner's decision. We see no need to visit the property located at 9713 Philadelphia Road and discern no reason to discuss the Motion.

We thank you for your consideration on this matter.

Sincerely,

Marie Q. Simoes
Marie Q. Simoes

cc: Honorable J. Robert Haines
Honorable Delegate Joe Bartenfelder
Mr. and Mrs. Frederick W. Marschke



- Bay 6 has been used by Mr. Marschke for storage of his landscape equipment

1. Requesting variance from setbacks and yard reqts. for SHED - can you explain
 - 2 years ago shed delivered - skid
 - uses of shed
 - attempted to have moved

How did it come to your attention that there was any problem with the use of your property.

1. Are you around the premises during the day?
2. Are you able to observe traffic coming in and out?
3. Can you approximate the traffic to the Storage Bldg. on a given day
4. Ever observe any congestion on roads as a result of the use

1. Are you familiar with properties in the vicinity of 9713 Philadelphia Road?
2. Can you describe uses with reference to the Plan
 - ML-IM on east side
 - DR on west side
3. Does proposal use serve these areas?
4. Again, you have obtained consents of neighbors, correct?

NAME	ADDRESS
Q. SIMES	1314 Spotswood Road Baltimore, MD 21237
L. TURNER	9226 ROVENWOOD DR. SALT LAKE, UT 21233

NAME	ADDRESS
William D. Shanksness, Jr	20 S. Charles St Bkto 21201
William F. Kirklin	18 E. S. S. ave. Tompkins 21204
Evelyn A. Marschke	9713 Philadelphia Rd 21237
Fred W. Altmacher	9713 Philadelphia Rd 21237
BRUCE J. GLASSMAN	9713 Philadelphia Rd Bkto 21237
DAVID A. KLEIN	9713 Philadelphia Rd CALTO 21237
George A. Klein Jr	7915 Balaia Rd - 21236
Pat. Joe Pardenfelder	4803 Ruyshin Ave 21236

NAME	ADDRESS
William D. Sheehy, Jr.	20 Scheraga St, Bello 2126
John A. Sheehy	1105 Philadelphia St, 21277
John A. Sheehy	" " "
William D. Sheehy	" " "
George A. Sheehy, Jr.	7415 Scheraga Rd 21236
Don M. Sheehy	1105 Piquette Rd 21271
Don A. Sheehy	" " "

NAME	ADDRESS
Marie O. Simoes	1314 Spotswood Road Bath, MD 21237
Wanda L. T. 1983	1226 Bayview Ave. Bath, Md. 21231

September 12, 1990

Baltimore County Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Re: Case No. 91-84-XA
9713 Philadelphia Road - Petition for Special
Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

Philo Jackson Matly
Property Owner

Address: 1206 Philco Road
Baltimore, Maryland 21237

ZONING OFFICE

Since the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

Richard L. Sney
Property Owner

Address: 9623 Philadelphia Road
Baltimore, Maryland 21237

Re: Case No. 91-84-XA
9713 Philadelphia Road - Petition for Special
Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

James C. Sarty
Property Owner

Address: 9701 Philadelphia Road
Baltimore, Maryland 21237

September 12, 1990

Baltimore County Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Re: Case No. 91-84-XA
9713 Philadelphia Road - Petition for Special
Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

Charles Magowan
Property Owner

Address: 9627 Philadelphia Road
Baltimore, Maryland 21237

Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

William D. Magowan
Property Owner

Address: 9625 Philadelphia Rd.
Baltimore, Maryland 21237

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

John E. Kell
Property Owner

Address: 1200 Philco Road
Baltimore, Maryland 21237

SEP 14 1990
ZONING OFFICE

September 12, 1990

Baltimore County Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Re: Case No. 91-84-XA
9713 Philadelphia Road - Petition for Special
Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

William A. Magowan
Property Owner

Address: 9715 Philadelphia Road
Baltimore, Maryland 21237

Re: Case No. 91-84-XA
9713 Philadelphia Road - Petition for Special
Exception and Zoning Variance

Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

Robert E. Magowan Sr.
Property Owner

Address: 9722 Philadelphia Road
Baltimore, Maryland 21237

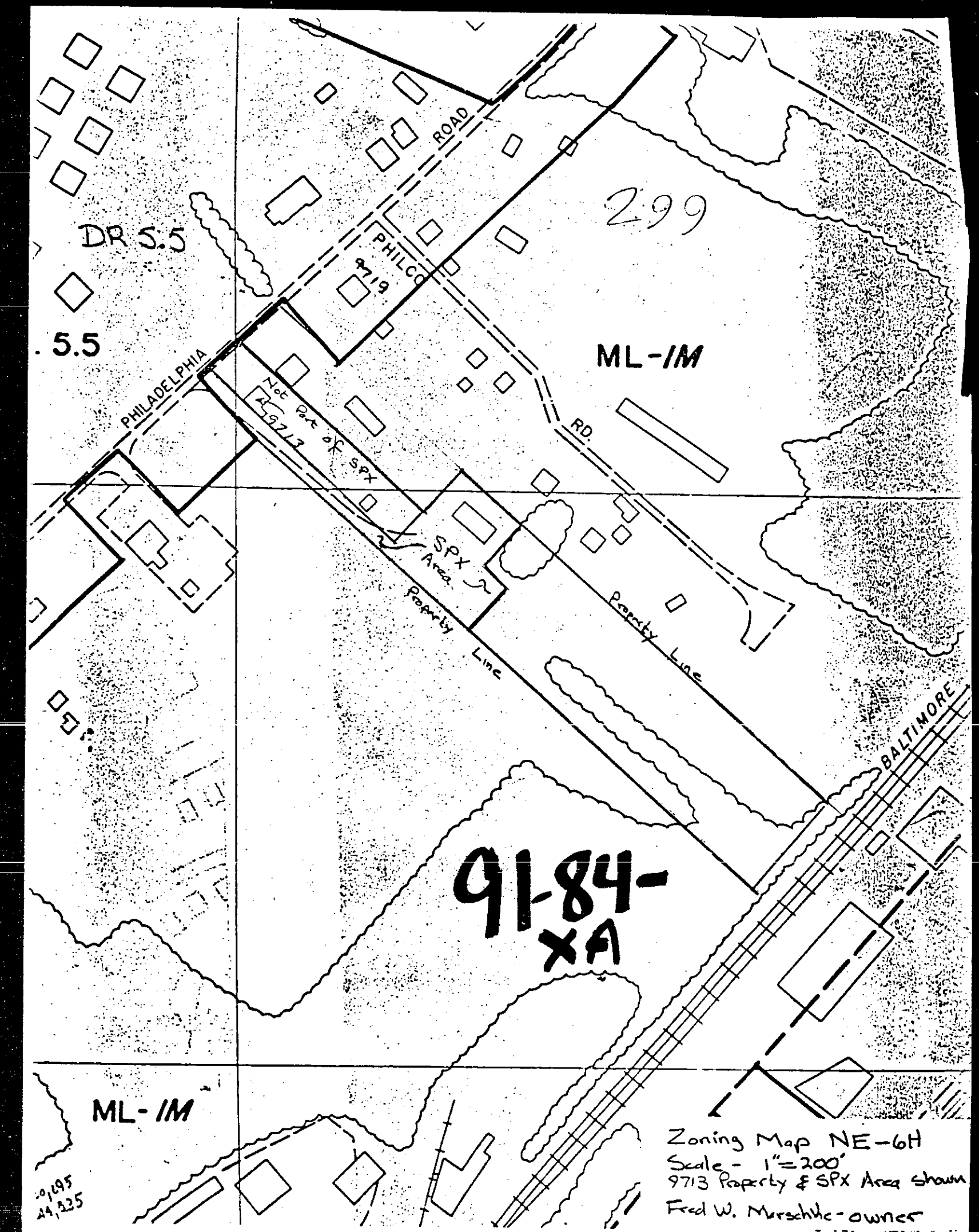
Dear Commissioner:

The purpose of this letter is to advise your offices that the undersigned property owner supports the Application for Special Exception and Variance for 9713 Philadelphia Road to continue to use the rear portion of such property as a service garage.

Very truly yours,

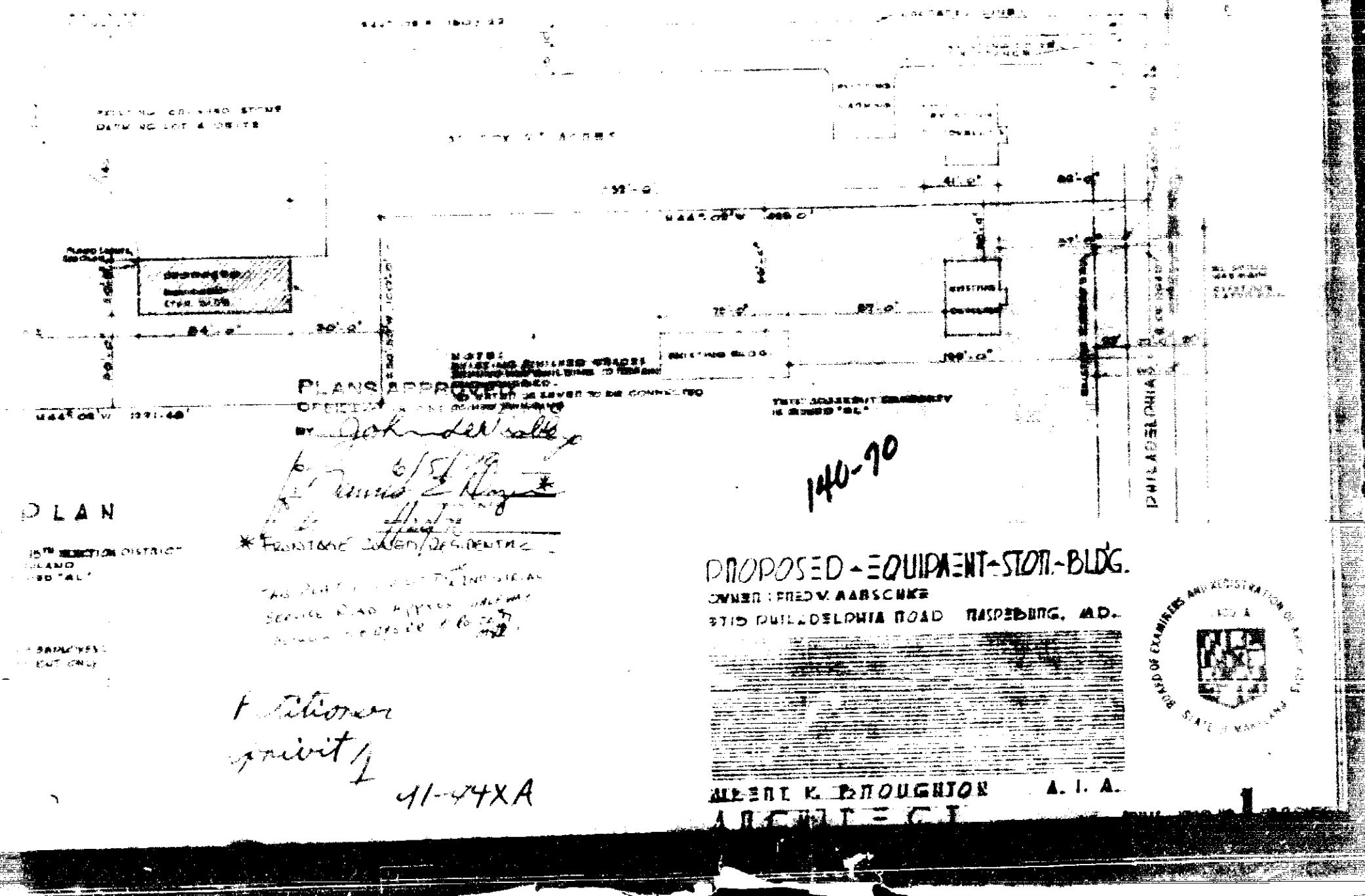
Gary A. Schuchert
Property Owner

Address: 1212 Philco Road
Baltimore, Maryland 21237



Replace
Door





BUILDING PERMIT

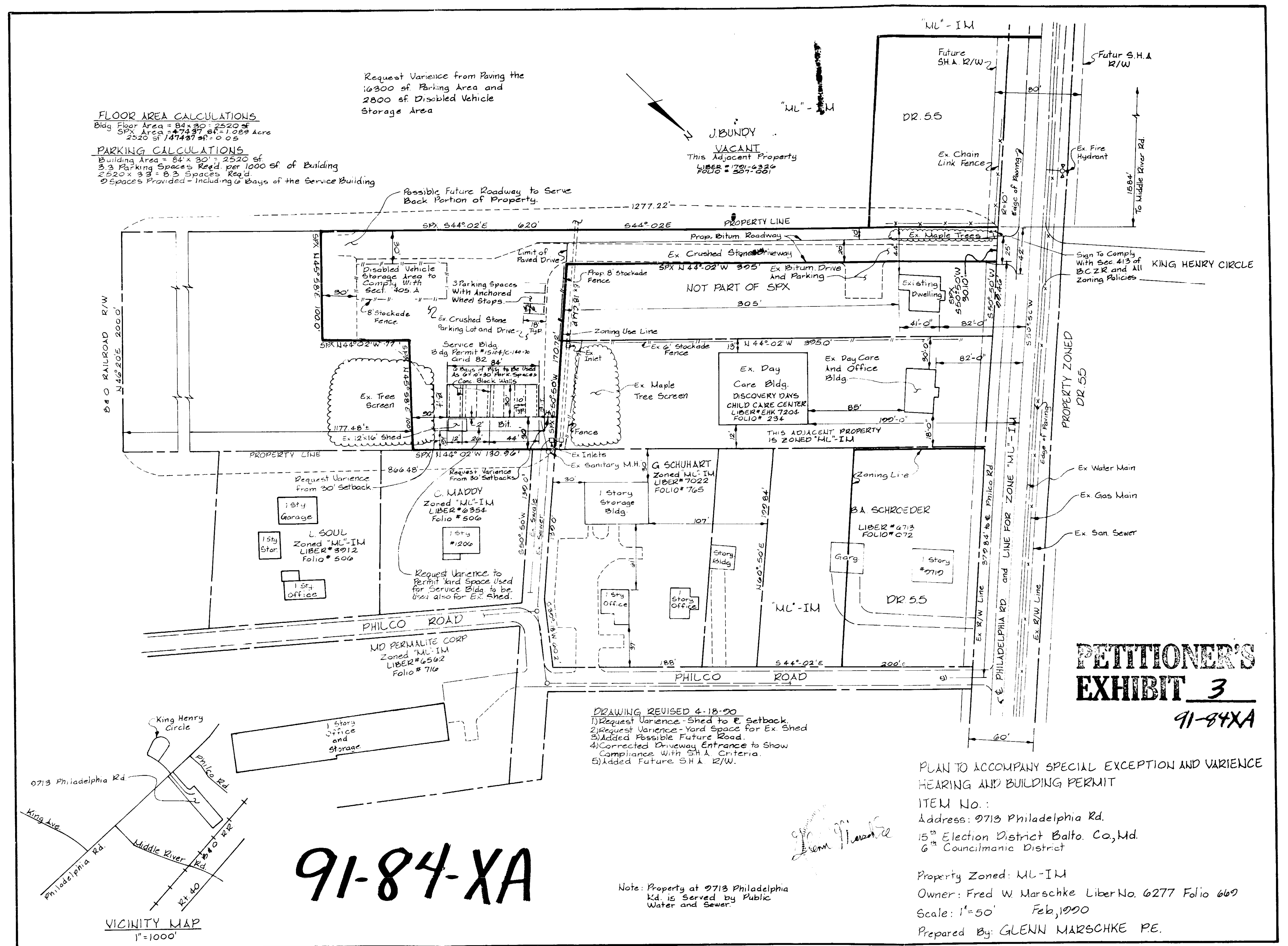
ALWAYS USE THE CONTROL AND THE PERMIT NUMBERS WHEN REQUESTING INSPECTIONS OR INFORMATION REGARDING THIS PERMIT. BUILDINGS ENGINEERS BUILDINGS INSPECTOR 494-3957

Baltimore County Maryland		15104 GRID 82 J	
OFFICE OF THE BUILDINGS ENGINEER		C-140-70 6-8-70	
COUNTY OFFICE BUILDING		TOWSON, MARYLAND 21204	
BUILDING ADDRESS: 9713 PHILADELPHIA ROAD		LOT 2 & PT. ACRE 100' ON S S BALTO. PHILA. TURNPIKE 1 N W S D & C R N	
OWNER	FRED W. MARSCHKE, 9713 PHILADELPHIA ROAD, 21236	NOTICE	33965
BUILDING CONTRACTOR	FRED W. MARSCHKE & COMPANY, SAME ADDRESS	THIS PERMIT EXPIRES: 2-24-71	
ENGINEER OR ARCHITECT	ALBERT K. BRAUSHTON, 6 BLISTER ST., 21220		
STRUCTURE DESCRIBED: STORAGE BLDG.			
IF THE PROJECT IS A NEW STRUCTURE THE INFORMATION BELOW DESCRIBES THE NEW STRUCTURE. IF THE PROJECT IS AN ADDITION OR ALTERATION, THE INFORMATION BELOW DESCRIBES THE ADDITION OR ALTERATION.			
E. DESCRIPTION OF WORK (PLEASE BE SPECIFIC)			
PLAN TO ERECT A EQUIPMENT STORAGE BUILDING TO KEEP EQUIPMENT AND PARTS OUT OF WEATHER.			
MCH			
APPLICANT'S AFFIDAVIT			
I, FRED W. MARSCHKE, do hereby certify that the above information is true and correct to the best of my knowledge and belief, and that I am the owner of the property described herein.			
DATE: 2-24-70			
ADDRESS: 9713 PHILADELPHIA ROAD, 21237			
DATE: 686-7259			
OWNER: [] AGENT: []			

THIS PERMIT MUST BE FULFILLED

Be sure to read your Permit and call for inspections.

The first of these inspections shall be called for as soon as the trenches for footings are completed, before backfilling. The second inspection shall be called for when the foundation has been waterproofed. The third inspection shall be called for when the structural members are in place, but before covering same with earth or plaster, or other covering. Final inspection shall be called for before structure is occupied. LIMITATION Except as otherwise herein provided this permit shall expire one year after the date of issue.



91-84-XA

Note: Property at 9713 Philadelphia Rd. is Served by Public Water and Sewer.

PLAN TO ACCOMPANY SPECIAL EXCEPTION AND VARIANCE HEARING AND BUILDING PERMIT

ITEM No.:

Address: 9713 Philadelphia Rd.

15th Election District Balto. Co., Md.

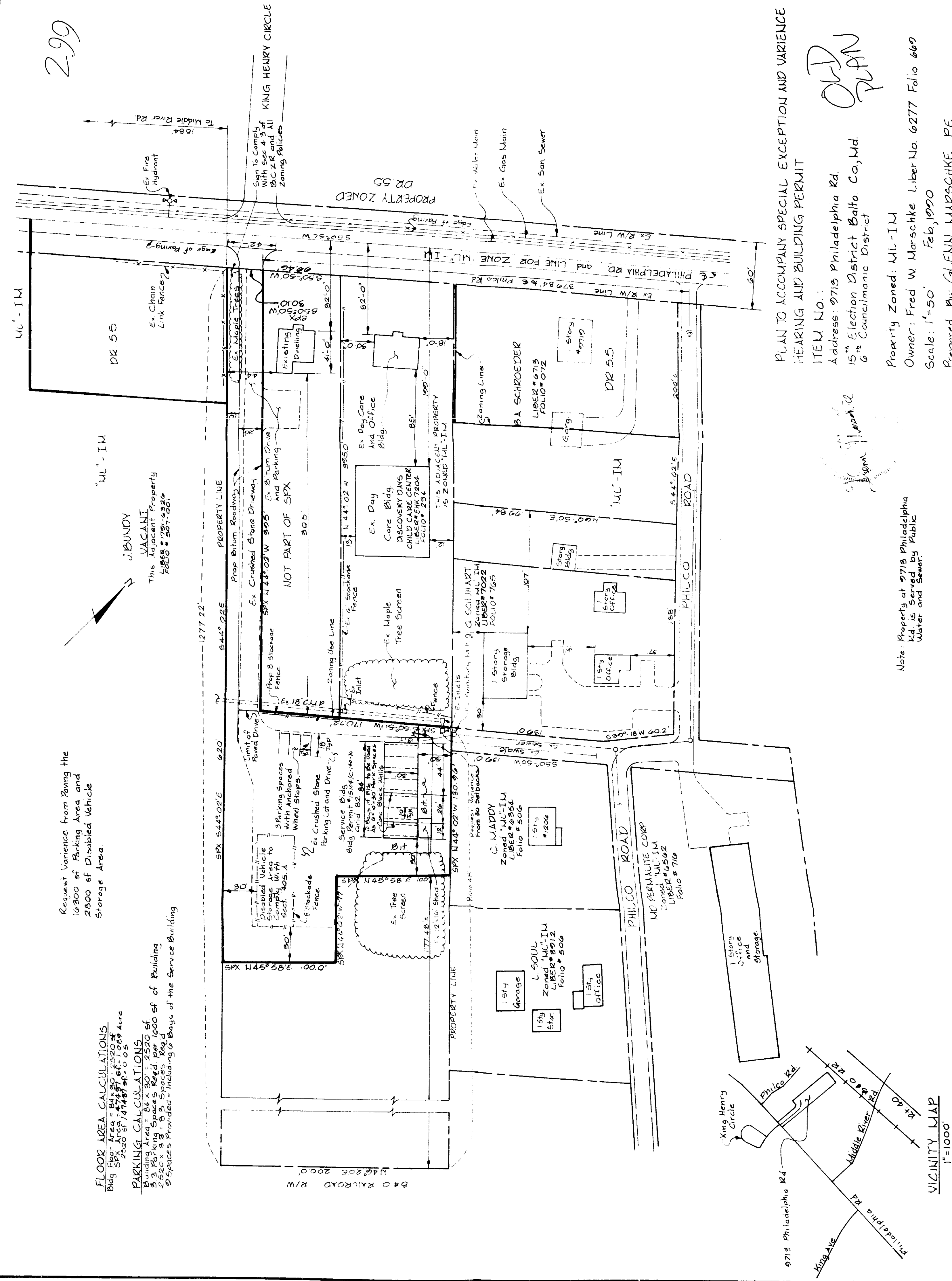
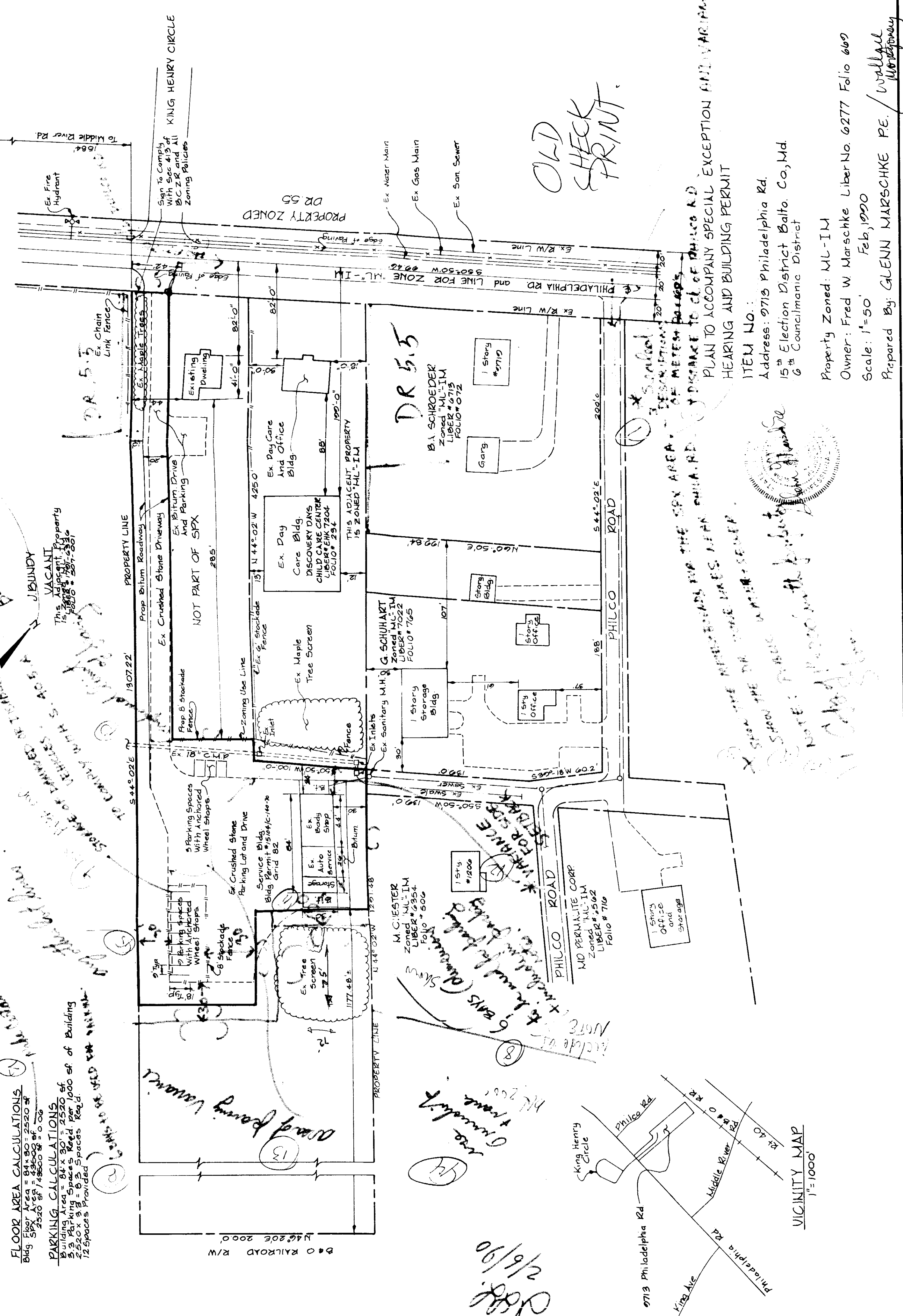
6th Councilmanic District

Property Zoned: ML-IM

Owner: Fred W. Marschke Liber No. 6277 Folio 660

Scale: 1"=50' Feb, 1970

Prepared By: GLENN MARSCHKE P.E.





M-SW M-SE
I-NW I-NE

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS
BY DATE

SCALE
1" = 200'

LOCATION

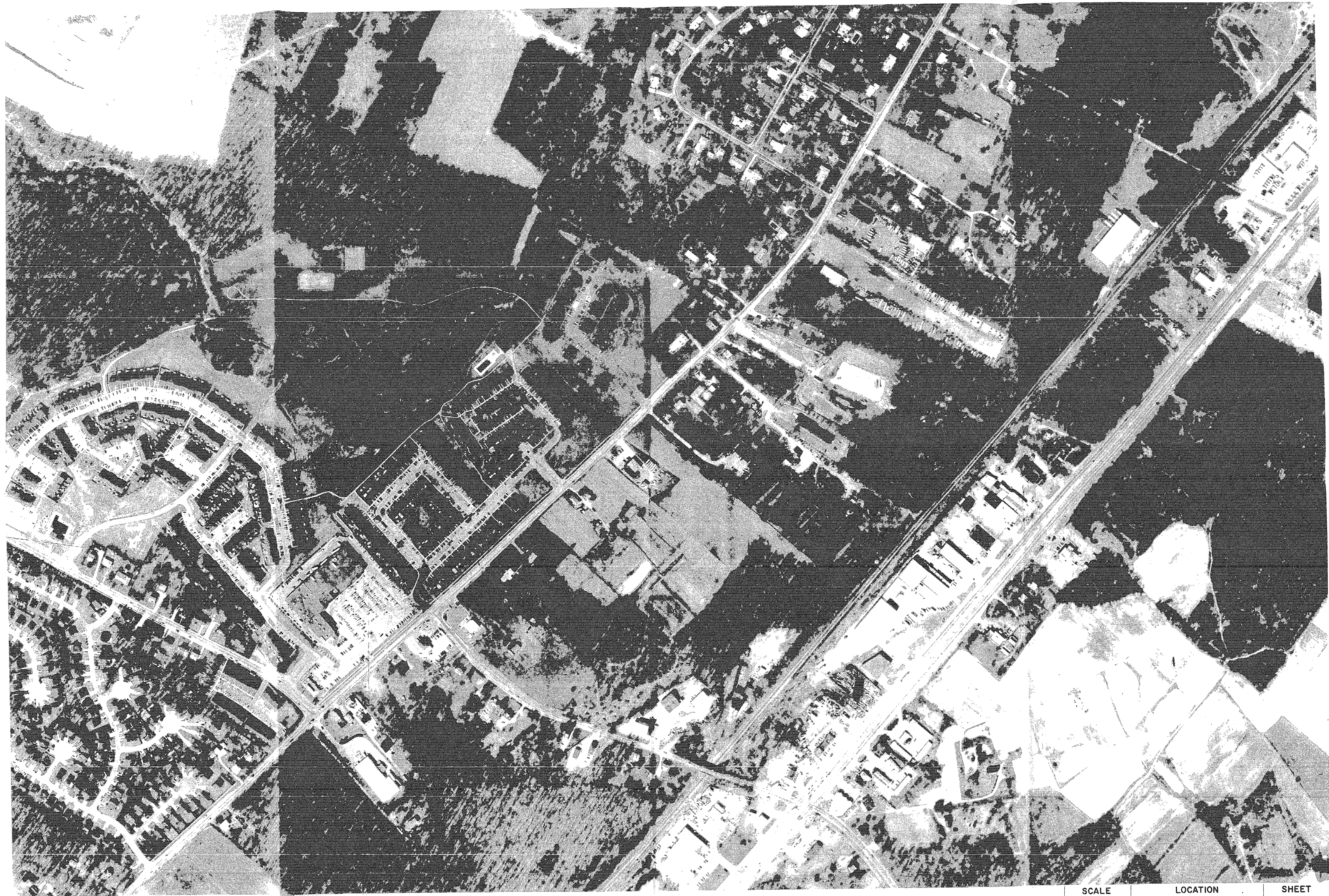
SHEET

POPLAR

N E
6 H

Topography Compiled By Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.

**PETITIONER'S
EXHIBIT 5**



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PETITIONER'S
EXHIBIT 4

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200' ±	POPLAR	NE 6-H
DATE OF PHOTOGRAPHY JANUARY 1986		

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - SE/S of Philadelphia Road, 379.84' SW of Philco Road (9713 Philadelphia Road) 15th Election District 6th Councilmanic District

* BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

* Case No. 91-84-XA

Fred W. Marschke, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a service garage and a variance to permit a side yard setback of 22 feet in lieu of the required 30 feet for an existing building, an offstreet parking area of approximately 16,300 sq.ft. to remain as crushed stone and unmarked in lieu of the required durable and dustless surface with required striping, to permit approximately 2,800 sq.ft. of parking area to be used as a storage area for damaged and disabled vehicles to remain as crushed stone surface in lieu of the required paving with permanent all-weather materials, to permit existing side yard setback from the property line of 16 feet, and a side yard setback of 2 feet from the existing building for an existing shed, both in lieu of the required 30 feet for each building, and to permit yard space and required area for rear yard setbacks for existing building to be used also for determining side and rear yard setbacks for the existing 12' x 16' shed, all as more particularly described in Petitioner's Exhibits 1 and 3.

The Petitioners appeared, testified and were represented by William D. Shaughnessy, Jr., Esquire. Also appearing on behalf of the Petition were William F. Kirwin, Architect, Bruce J. Glassman, David A. Klein, George A. Klein, Jr., and Delegate Joseph Bartenfelder. Appearing as Protestants in the matter were Marie Q. Simoes and Gloria J. Turner.

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Date 12/15/91
By [Signature]

Testimony indicated that the subject property, known as 9713 Philadelphia Road, consists of 1.0893 acres more or less zoned M.L.-I.M. and is improved with an existing six-bay garage and a 1 and 1/2 story dwelling which has been the Petitioners' residence since 1959. Petitioners obtained approval to construct the garage in June 1970 to store equipment used in Mr. Marschke's construction and dredging business. Testimony indicated that in 1984, he retired and has been leasing out the majority of the building to provide an income for himself and his wife. Petitioners testified that as a result of a complaint filed with the Zoning Office, they were advised to file the instant Petitions to permit the continued use of the subject building as service garages. Testimony indicated the existing 12' x 16' shed behind the storage building, as set forth in Petitioner's Exhibit 6, is used by the Petitioners for storage of personal items. Mr. Marschke testified that Bays 1, 2 and 3 are currently leased to David Klein for the operation of D. Klein's Bodyworks, Inc., for body and fender repair. He further testified that Bays 4 and 5 are leased to Bruce Glassman for the operation of Bruce's Automotive Service, Inc., which specializes in ignition and electrical problems, and Bay 6 is used by Mr. Marschke for storage of his personal landscape equipment. Neither of the automotive service operations has storage space for damaged and/or disabled vehicles nor do they provide towing services from the subject site. Both businesses are small, one person operations and are oriented towards exclusive auto services. Testimony indicated that in Mr. Glassman's case, most service requests come from dealerships.

William Kirwin testified on behalf of the Petitions. In response to comments submitted by the Deputy Director of Planning dated April 10, 1990, Mr. Kirwin testified that in his opinion, there was no need for a

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By [Signature]

- 2 -

landscaping plan or for fencing of the proposed parking lot and automobile storage area for damaged and disabled vehicles.

The Protestants testified in opposition to the relief requested and indicated that in their opinion, the subject uses and the old buildings should not be permitted to continue operating indefinitely. They testified as to their concerns regarding the residential integrity of the communities across from the subject site and the protection of the health, safety and general welfare of the public. The Protestants want good development of the land that is consistent with the overall desire for a high-quality environment. To that end, they have requested that the variances not be permitted to run with the land but be restricted to only the existing building and shed on the subject property.

The Petitioners argued the majority of the relief requested is for existing structures and parking facilities. The variances for the parking areas as set forth in Petitioner's Exhibit 1 are necessary as a result of current zoning regulations requiring a wider access road and paved surfaces, which are not necessary for these buildings or uses.

Section 253.2.B.3 of the B.C.Z.R. requires that any such use will serve primarily the industrial uses and related activities in the surrounding industrial area. It is clear from the testimony that D. Klein's Bodyworks, Inc. serves only the general public. There are no facts or evidence in the record that establishes that this body and fender shop is special and unique in relationship to the industrial uses and related activities in the surrounding M.L.-I.M. area. In fact, Mr. Klein stated that his customers are ordinary individuals who bring their cars to him for service. Obviously, these individuals have no connection to the sur-

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Date 12/15/91
By [Signature]

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rounding industrial uses. As such, Mr. Klein's use does not meet the requirements of Section 253.2.B.3.

Mr. Glassman's testimony was clear that over 90% of his customers come as referrals from commercial establishments such as car dealerships and other automotive facilities. His business clearly serves the industrial uses or related activities in the surrounding industrial area. Mr. Glassman's testimony indicated that most of these other establishments are in the general Philadelphia Road area or in the southeastern part of Baltimore County.

After due consideration of the testimony and evidence presented, it is clear that a special exception for Bruce's Automotive Service, Inc. should be granted. It is equally clear, however, that the relief requested for D. Klein's Bodyworks, Inc. does not meet the requirements set forth in Sections 502.1 and should be denied.

The testimony presented indicated that the intended use of the proposed storage area for damaged and disabled vehicles is for D. Klein's Bodyworks, Inc. Inasmuch as his use of the property as a body and fender repair shop for the general public is an improper use for the subject site, the variance requested for the proposed storage area must be denied. The testimony presented on behalf of Bruce's Automotive Service, Inc. was clear that the cars being serviced are stored inside the bays leased by this establishment and therefore, no outside storage is needed. While I am not sure that a full scale landscaping plan is necessary for this particular site, I am equally sure that a great deal of landscape fencing may not benefit the surrounding community. I see these as issues which can be resolved in the development of a landscape plan in compliance with the comments submitted by the Deputy Director of Planning. In light of the

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Date 12/15/91
By [Signature]

- 4 -

fact that the proposed storage area for damaged and disabled vehicles has been found to be inappropriate for this site, no fencing of this area will be necessary.

It is clear that the B.C.Z.R. permits the use proposed by Bruce's Automotive Service, Inc. in a M.L.-I.M. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Sections 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use by Bruce's Automotive Service, Inc. would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception for Bruce's Automotive Service, Inc., should be granted with certain restrictions as more fully described below,

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Date 12/15/91
By [Signature]

- 5 -

and, for the reasons stated above, the special exception for D. Klein's Bodyworks, Inc. should be denied.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, as modified, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception and variances should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of December, 1990 that the Petition for Special Exception to permit a service garage use of Bays 4 and 5 by

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Date 12/15/91
By [Signature]

- 6 -

Bruce's Automotive Service, Inc., as set forth on Petitioner's Exhibit 3, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Bodyworks, Inc., as set forth on Petitioner's Exhibit 3, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit a side yard setback of 22 feet in lieu of the required 30 feet for an existing building, an offstreet parking area of approximately 16,300 sq.ft. to remain as crushed stone and unmarked in lieu of the required durable and dustless surface with required striping, an existing side yard setback from the property line of 16 feet, and a side yard setback of 2 feet from the existing building for an existing shed, both in lieu of the required 30 feet for each building, and to permit yard space and required area for rear yard setbacks for the existing building to be used for determining side and rear yard setbacks for the existing 12' x 16' shed, in accordance with Petitioner's Exhibits 1 and 3, be and are hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) The special exception relief granted herein is limited to the use of Bays 4 and 5 for the operation of Bruce's Automotive Service, Inc. by Bruce Glassman. Besides Mr. Glassman, there shall be no more than two (2) other employees working at the subject site.
- 3) Inasmuch as the relief granted herein is limited to Bays 4 and 5, the Petitioner must file a new Petition for Special Exception for Bays 1, 2 and 3 or find a suitable tenant for a use permitted as of right.

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Date 12/15/91
By [Signature]

- 7 -

- 4) The variances granted herein are limited to the existing building and shed as depicted on Petitioner's Exhibit 1 and shall not be transferable for any new building or use. There shall be no further expansion of either building.
- 5) In the event destruction of the existing building or shed occurs, no replacement of either building shall be permitted.
- 6) In the event any change in use and/or occupancy of the subject property is proposed, only a use consistent with the requirements of the Baltimore County Zoning Regulations shall be permitted.
- 7) The subject property may not be subdivided without a special hearing to amend the relief granted herein.
- 8) There shall be no outside storage of damaged or disabled vehicles on the subject property and no automobile storage lot shall be established on the site.
- 9) There shall be no towing services to or from the subject site and no towing company or operation shall be permitted to be established on the property.
- 10) Hours of operation are limited to from 7:30 AM to 7:30 PM, Monday through Friday.
- 11) All exterior lighting for the subject site shall be erected in such a manner as to deflect away from any adjoining residential properties and shall be no higher than 14 feet above grade.
- 12) There shall be no outside paging system.

- 13) Petitioners shall submit a landscaping plan for approval by the Deputy Director of Planning. A copy of the approved plan shall be submitted to the Zoning Commissioner's Office by no later than May 1, 1991.
- 14) Compliance with all Zoning Plans Advisory Committee comments submitted, including, but not limited to, the Department of Environmental Protection and Resource Management comments submitted by Robert C. Merrey, Jr., dated April 16, 1990, and the Office of Planning comments dated April 10, 1990, attached hereto and made a part hereof.
- 15) Petitioners shall maintain records indicating compliance with the required treatment of the crusher run surface areas as required by DEPDEM. Said records shall be made available for review by the Zoning Enforcement Division of this Office upon request.

ORDER RECEIVED FOR FILING
Date 12/15/91
By [Signature]

- 8 -

16) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

IT IS FURTHER ORDERED that the Petition for Variance to permit approximately 2,800 sq.ft. of parking area to be used as a storage area for damaged and disabled vehicles to remain as crushed stone surface in lieu of the required paving with permanent all-weather materials, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the proposed storage area as depicted on Petitioner's Exhibit I, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that D. Klein's Bodyworks, Inc. shall have until July 1, 1991 to relocate his business operation.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

IN RE: PETITIONS FOR * BEFORE THE
SPECIAL EXCEPTION * ZONING COMMISSIONER
AND ZONING VARIANCE * OF BALTIMORE COUNTY
SE/S of Philadelphia *
Road, 379.84' SW *
of Philco Road * Case No.: 91-84-XA
(9713 Philadelphia *
Road) *
15th Election *
District *
6th Councilmanic *
District *

Fred W. Marschke, et ux.
Petitioners

ENTRY OF APPEARANCE

DEAR MADAM CLERK:

Please enter the appearance of S. Eric DiNenna, DiNenna and Breschi, on behalf of David Klein.

S. Eric DiNenna
S. ERIC DINENNA, P.A.
409 Washington Avenue
Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorney for David Klein

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of January, 1991, a copy of the foregoing Entry of Appearance was mailed, postage prepaid, to William D. Shaughnessy, Jr., Esquire, Kaplan, Heyman, Greenberg, Engelman & Belgrad, P.A., Tenth Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201. Attorney for Petitioners: Ms. Marie Q. Simoes, 1314 Spotswood Road, Baltimore, Maryland 21237; Ms. Gloria J. Turner, 9226 Ravenwood Road, Baltimore, Maryland 21237.

S. Eric DiNenna
S. ERIC DINENNA

DINENNA AND BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.

SUITE 600
MERCANTILE TOWNSHIP BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820
TELEFAX (301) 296-0884

January 31, 1991

J. Robert Haines
Zoning Commissioner for Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: My Client: David Klein
Case No. 91-84-XA
Location: 9713 Philadelphia Rd.

Dear Mr. Commissioner:

Enclosed herewith please find my Entry of Appearance on behalf of David Klein concerning the reconsideration hearing set for February 5, 1991 at 4:00 p.m.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:cjc
Enclosure
cc: Mr. David Klein
William D. Shaughnessy, Jr., Esquire
Ms. Marie Q. Simoes
Ms. Gloria J. Turner

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND ZONING VARIANCE - SE/S OF * ZONING COMMISSIONER
Philadelphia Road, 379.84' SW *
of Philco Road * OF BALTIMORE COUNTY
(9713 Philadelphia Road) *
15th Election District * Case No. 91-84-XA
6th Councilmanic District *
Fred W. Marschke, et ux *
Petitioners *

MOTION FOR RECONSIDERATION,
MODIFICATION AND SUPPLEMENTATION

Petitioners, by and through the undersigned counsel, move the Zoning Commissioner to reconsider, modify and supplement the Findings of Fact and Conclusions of Law and the Order issued in the above case on December 28, 1990.

I. USE OF BAYS 1, 2 and 3

BY D. KLEIN'S BODY WORKS, INC.

In the Commissioner's November 28, 1990 Order, the Commissioner denied the Petition for Special Exception to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Body Works, Inc. The Commissioner found that "D. Klein's Body Works, Inc. served only the general public", that this body and fender shop had "no special and unique relationship to the industrial uses and related activities in the surrounding ML-1M area" and that, as such, Mr. Klein's use would not meet the requirements of Section 253.2.B.3 of the Baltimore County Zoning Regulations.

A review of Mr. Klein's testimony in this matter might leave one with an unclear impression of the type of business

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Mr. Klein conducts and the sources for his business. Mr. Klein's testimony was, in part:

Mr. Shaughnessy: Does your shop serve the immediate industrial area and the related activities in the immediate area of 9713 Philadelphia Road?

D. Klein: Right now, I would say 90% of my customers come from that area, most people live in that area, but also I've also sent out letters - as a matter of fact this week we sent out another group of letters to different industries in the area trying to get their fleet work from them.

Mr. Shaughnessy: So approximately 90% of your business comes from the industrial and the -

D. Klein: - immediate area.

Mr. Shaughnessy: -- immediately surrounding area.

D. Klein: - yeah.

Mr. Klein subsequently testified that generally the vehicles upon which he works are driven (as opposed to towed) to his shop and that generally they are completed and delivered to the customer within two days.

While Mr. Klein's testimony might leave the Commissioner with the impression that his customers are ordinary individuals who bring their cars to him for service, in fact a great deal of Mr. Klein's work comes as referrals from other commercial establishments and facilities which are located in the surrounding industrial area. Additionally, Mr. Klein has performed auto body work for vehicles owned by Baltimore County, CBM Contractors, Hoenig Contractors, Aero Heating, and other businesses in the immediate area. As testified to by Mr. Klein, he has been soliciting "different industries in the

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area trying to get their fleet work from them" and Mr. Klein continues to target his business to serve these uses.

Although Mr. Klein does have customers who are "ordinary individuals who bring their cars to him for service", the target of his business is to serve "primarily the industrial uses and related activities in the surrounding industrial area" and the majority of his referrals come from businesses in such area.

Section 253.2.B.3 of the B.C.Z.R. requires that a special exception use "will serve primarily" the industrial uses and related activities in the surrounding industrial area. The use of the word "will" indicates that the focus of the inquiry should be, not who are the end-use customers at any static point in time, but rather is the use designed to serve "primarily the industrial uses and related activities in the surrounding industrial area."

Petitioners request that Mr. Klein be permitted to supplement his testimony to make clear that the special exception use requested "will serve" primarily the industrial uses and related activities in the surrounding industrial area. Such supplementation would include Mr. Klein's testimony that approximately 60% of his work comes to him as a referral from other shops and businesses in the surrounding industrial area, testimony as to specific commercial and industrial clients for whom he has performed work, and testimony concerning the continued solicitation of business from industries in the immediate area.

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Based upon Mr. Klein's testimony at the October 23, 1990 hearing, supplemented (if necessary) by such additional testimony as may be permitted by the Zoning Commissioner pursuant to this Motion, Petitioners would request that the Commissioner modify the December 28, 1990 Order to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Body Works, Inc. or operations substantially similar to his limited operation.

II. RESTRICTIONS TO ZONING VARIANCE

In the November 28, 1990 Order, the Commissioner conditioned the grant of various zoning variances upon certain enumerated restrictions. Petitioners request modification of various of these restrictions as set forth below.

A. Condition No. 2

Condition No. 2 states:

The special exception relief granted herein is limited to the use of Bays 4 and 5 for the operation of Bruce's Automotive Service, Inc. by Bruce Glassman. Besides Mr. Glassman, there shall be no more than two (2) other employees working at the subject site.

Petitioner requests that the special exception relief granted with respect to Bays 4 and 5 not be limited solely to the existing tenant, Bruce's Automotive Service, Inc. If the existing tenant were to leave the premises for whatever reason, and if Petitioners were to procure a replacement tenant who conducted a small-scale operation substantially similar to the business currently conducted by Bruce's

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Automotive Service, Inc., then Petitioner should not be required to institute a substantial Petition for Special Exception to permit such subsequent tenant to conduct a business which would be substantially similar to that envisioned by the grant of the Special Exception. The possible time commitment involved in procuring such a subsequent special exception for each subsequent tenant, as well as the attendant costs, could impose tremendous hardship upon Petitioners. It is the nature and intensity of the use which is paramount.

Petitioner is sensitive to the concerns of the Zoning Commissioner and the Protestants that, without further approval, there should be no more expansive use of Bays 4 and 5 than that use currently conducted by Bruce's Automotive Service, Inc. Petitioners do not desire to have a more expansive use than that currently conducted on Bays 4 and 5 and Petitioners are willing to limit the use of Bays 4 and 5 to an operation similar to that currently conducted. Accordingly, Petitioners pray that Condition No. 2 be modified to provide a special exception for the use of a service garage which is no more expansive than that currently conducted, such use being, of course, otherwise subject to the provisions of the Order. Petitioners pray that Condition No. 2 be modified to read as follows:

2) The special exception relief granted herein for the use of Bays 4 and 5 is for a limited service operation similar to that operation currently being made by Bruce's Automotive Service, Inc. In no event shall

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there be a total of more than three persons working at the subject bays. 1/

B. Condition No. 3

Condition No. 3 provides:

3) Inasmuch as the relief granted herein is limited to Bays 4 and 5, the Petitioner must file a new Petition for Special Exception for Bays 1, 2 and 3 or find a suitable tenant for a use permitted as of right.

In the event that the Commissioner grants Petitioners' request Section I in this Motion and grants a special exception to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Body Works, Inc., Petitioners request that Condition No. 3 be deleted.

C. Condition No. 4

Condition No. 4 provides:

4) The variances granted herein are limited to the existing building and shed as depicted on Petitioner's Exhibit 1 and shall not be transferable for any new building or use. There shall be no further expansion of either building.

Petitioners request that the word "or use" at the end of the first sentence be deleted. The variances are granted as to the existing structures and condition of the property, not the use. For example, if Petitioners were subsequently to lease the bays to a "use" permitted as of right in the ML-IM District, this would be a change of use, however, Petitioners should not need to again petition for variances from the set back requirements, yard requirements, etc. 2/

1 & 2/ Consistent with the above, Petitioners request that the words "and/or occupancy" be deleted from Condition No. 6.

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D. Condition No. 5

Condition No. 5 provides:

5) In the event destruction of the existing building or shed occurs, no replacement of either building shall be permitted.

Petitioners request that this condition be clarified to provide that "In the event destruction of the existing building or shed occurs, no replacement of either building shall be permitted within the then-applicable set backs required by the Baltimore County Zoning Regulations." (Emphasis added)

E. Condition No. 8

Condition No. 8 provides:

8) There shall be no outside storage of damaged or disabled vehicles on the subject property and no automobile storage lot shall be established on the site.

For the reasons set forth below, the Petitioners request that Condition No. 8 be modified.

(i) Condition No. 8 as applied to Bays 4 and 5 Bruce's Automotive Service, Inc.

At the October 23, 1990 hearing, Bruce Glassman testified that he did not store damaged or disabled vehicles on the parking lot. Mr. Glassman further testified that, although most of his work is one day service, occasionally he may need to keep a vehicle overnight (in which case he would lock the vehicle in his shop), and rarely a vehicle might be kept "two to three days" if he could not immediately obtain a necessary part.

Given these facts, it is foreseeable that, incident to the limited operations of Mr. Glassman, a temporarily

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inoperable vehicle might be on the property until a needed part arrived. While such a vehicle may have valid tags and registration, it should not be deemed "damaged or disabled" simply because it cannot operate under its own power until the appropriate part is installed.

Petitioner is cognizant of the concerns of the Zoning Commissioner and the Protestants that the property not become a junk yard or a location for the storage of damaged or disabled vehicles for any substantial period of time. Accordingly, Petitioners request that Condition No. 8 be modified as to the user of Bays 4 and 5 (Bruce's Automotive Service, Inc.) to provide the following:

8.1) With respect to the use of Bays 4 and 5, the user of such bays shall not establish an automobile storage lot nor store outside damaged or disabled vehicles upon the site; except, however, nothing herein shall be deemed to preclude the user of Bays 4 and 5 from parking not more than two temporarily inoperable vehicles on the site, provided that (a) any such vehicle shall have current license tags, (b) any such vehicle is in the process of being repaired and is awaiting necessary parts, AND (c) in no event shall any such vehicle remain inoperable and parked on the site for longer than seven days.

(ii) Condition No. 8 as applied to Bays 1, 2 and 3 (D. Klein's Bodywork's Inc.)

In the event that the Commissioner modifies the December 28, 1990 Order to permit a service garage use of Bays 1, 2 and 3 by D. Klein's Bodyworks, Inc. as requested in Section I of this Motion, Petitioner requests that the Commissioner allow a limited right to store damage and disabled vehicles upon the site.

At the October 23, 1990 hearing, Mr. Klein testified

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that he customarily might have two or three vehicles during the course of a week at the property and that he would anticipate storing a maximum number of three damaged or disabled vehicles at the property at any time. Mr. Klein further testified that one month was the maximum length of time that a disabled vehicle has sat on the property while awaiting an insurance adjustment. Mr. Klein emphasized that he does not keep any disabled vehicles on the property for "parts" and that all vehicles he has brought onto the property are for the sole purpose of repairing or restoring such vehicles to operating condition.

At the October 23, 1990 hearing, the Protestants expressed concern that the disabled vehicles might be stored for "parts" and that the property might become littered with "junk" vehicles. Petitioners do not intend to permit such actions and are willing to limit the number and duration of stay for disabled vehicles temporarily stored by the operator of Bays 1, 2 and 3. Petitioners suggest that the following conditions could appropriately address the concerns of the Protestants as well as accommodate the needs of the business:

8.2) The operator of Bays 1, 2 and 3 shall have a limited right to temporarily store damaged or disabled vehicles within the area designated as "Disabled Vehicle Storage Area" on Petitioner's Exhibit 1 PROVIDED (1) in no event shall more than three such vehicles be stored by the operator, (2) in no event shall any such vehicle be stored for more than 50 days, and (3) in no event shall any vehicle be stored for purposes of dismantling such vehicle for "parts".

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F. Condition No. 9

Condition No. 9 provides:

9) There shall be no towing services to or from the subject site and no towing company or operation shall be permitted to be established on the property.

Petitioners request that Condition No. 9 be modified to make clear that, while a towing company or towing business shall not be operated on the property, nothing shall preclude tenants at the property from having vehicles towed to their business so that the vehicles may be worked upon. For example, Mr. Glassman testified that his business primarily deals with electrical problems of vehicles. In the event of an electrical problem, frequently the vehicle cannot be driven to Mr. Glassman's shop and the vehicle is towed to the shop for service. Additionally, Mr. Klein has indicated that, although vehicles on which he does service are generally driven in, occasionally vehicles are towed to his business.

Petitioners are sensitive to the concerns of the Zoning Commissioner and Protestants that a towing operation or company should not be established on the property, nor should the property become a "drop-off" lot for a towing company, nor should any of the tenants use a tow truck of their own in the conduct of their business. Restrictions on towing should not, however, prohibit the incidental towing of an inoperable vehicle to the property so that work can be performed to make

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the vehicle operable.

Accordingly, Petitioners pray that Restriction No. 9 be modified to provide:

9) There shall be no towing company or operation established or permitted to be established on the property, nor shall the property be used as a regular "drop-off" site by any towing company, nor shall any business utilizing the property operate a towing vehicle for transporting vehicles to the property. Nothing herein shall prohibit, however, the towing of a vehicle to the property incidental to having work performed on such vehicle at the property.

G. Condition No. 10

Condition No. 10 provides:

10) Hours of operation are limited from 7:30 AM to 7:30 P.M. Monday through Friday.

Petitioners request that operations be permitted on Saturday, as well. At the October 23, 1990 hearing, Mr. Bruce Glassman testified that, for the more than four years which he has conducted business at the property, he has done business on Saturdays. Additionally, Mr. Dave Klein also conducts business on Saturdays. Frequently, Saturday operations are necessary for service garage-type uses so that operators might completed unfinished work, perform maintenance on their equipment, and have a substantial block of uninterrupted time to devote to a problem. Precluding Saturday work would have a significant detrimental impact to the operation of businesses at the property while permitting Saturday operation would not pose any significant concern to the health, safety or general welfare of the public.

Accordingly, Petitioners request that Condition No. 10

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be modified to provide:

10) Hours of operation are limited to 7:30 AM to 7:30 PM, Monday through Friday, and 7:30 AM to 5:30 PM on Saturday.

III. MISCELLANEOUS

In the event that the Commissioner should grant the relief requested above, Petitioners request that the Order be modified to grant the Petition for Variance to permit approximately 2,800 square feet of parking area to be used as a storage area for damaged and disabled vehicles, to remain as crushed stone in lieu of the required paving with permanent all-weather materials. It is further requested that fencing of the Disabled Vehicle Storage Area not be required, but appropriate determination be made by the Deputy Director of Planning after Petitioners have submitted a landscape plan pursuant to the Commissioner's Order.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that on this 21st day of January, 1991, a copy of the foregoing Motion was mailed, first class, postage prepaid, to:

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